

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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INDUSTRIAL CARRIERS INC.,	:
	:
Plaintiff,	:
	:
- against -	:
	:
DAYTON COMMERCIAL LIMITED a.k.a.	:
GALVANIZED STEEL CONSUMERS	:
ASSOCIATION a.k.a. GSCA a.k.a.	:
GSCA LIMITED a.k.a. TOP UNION,	:
	:
Defendant.	:
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07 CV 7937 (RMB)
ECF CASE

DECLARATION OF THOMAS L. TISDALE

THOMAS L. TISDALE, an attorney at law, declares under penalty of perjury as follows:

1. I am an attorney admitted to practice before this Court and am a member of the law firm of Tisdale Law Offices, LLC, attorneys for the Plaintiff, Industrial Carriers Inc. ("ICI"). I submit this Declaration on behalf of ICI in support of its opposition to Top Union (China) Ltd.'s ("Top Union") motion to vacate maritime attachment.

2. I make this declaration based upon my own personal knowledge and upon documentation provided by our clients or brokers, as identified herein which I believe to be true and accurate.

3. The Verified Amended Complaint names Top Union as a name by which Dayton Commercial Limited and GSCA are also known. *See Verified Amended Complaint annexed hereto as Ex. "1" at ¶ 5.*

4. By a fixture recap of a charter party dated February 1, 2007, the Plaintiff chartered the M/V Alexis (hereinafter the "Vessel") to the Defendant (Dayton). *See M/V Alexis Fixture Recap annexed hereto as Ex. "2."*

5. The second page of the fixture states that the charterer is "Dayton Commercial Limited" but that:

Last fixtures under account Top Union:

-m/v Manas, steel coils Changshu+Qingdao/St. Petersburg, disp ows: Paksu Shipping, Istanbul

-m/v Navios Heracles, steel coils Changshu+Dalian/St. Petersburg, disp ows: Hyundai Merchant Marine

See Ex. "2."

6. In the shipping industry, this reference clearly means that Dayton Commercial Limited made its last two charters (the M/V MANAS and M/V NAVIOS HERACLES) using the name "Top Union."

7. An Infospectrum Report was commissioned by ICI to obtain further information about Top Union and their business. In the resulting report dated December 6, 2007, Infospectrum confirms that Top Union was the charterer of the M/V MANAS and that "both Dayton and Top Union have been described as new names for GSCA." *See Infospectrum Report annexed hereto as Ex. "3" at page 2.*

8. The Infospectrum Report goes on to say that:

we have spoken to sources at Paksu and Pacmar.¹ They confirm the MANAS was fixed with Top Union for a single trip around 3 months ago" ... [and that] ... "the full style of Top Union is "Top Union China Hong Kong." "They have been informed that Top Union is ex-GSCA UK.

¹ The Paksu referenced here was the disponent owner of the M/V Manas that chartered the ship to Top Union. Pacmar is a ship broker who fixed the M/V Manas to Top Union through their broker, Neva Delta.

See Ex. "3" at page 2.

9. The Infospectrum Report further states that there is only one Top Union (China) registered in Hong Kong and its registered name is "Top Union (China) Limited." *See Ex. "3" at page 3.*

10. Moreover, in an email dated January 14, 2008, in response to a request for further information identifying Top Union, Ms. Connie Lim of Pacmar made the following statement regarding the M/V MANAS fixture to Top Union as charterers:

We have only the address of these chtrs:

TOP UNION (CHINA) LTD.
UNIT 801, 8/F, BONHAM TRADE CENTER,
50 BONHAM STRAND, HONGKONG

WE FIXED THESE CARGO VIA CHTRS BROKERS:

NEVA-DELTA SHIPPING AGENCY
198095, prospect marshala govorova, 35
"yellow corner" bldg, office 124
St. Petersburg, Russia

See January 14, 2008 email from Connie Lim to adachart re. mv manas annexed hereto as Ex.

"4." Ms. Lim goes on state that "when we fixed these business, they mention in clean fixture that Top Union is former GSCA London, UK. After these fixtures, we fixed them with Acct: Dayton which they mentioned belong to the same group as Top Union." *See Id.*

11. In the Declaration of Huang Liangjin submitted in support of Top Union's motion to vacate ("Liangjin Decl."), Top Union alleges that it is a Chinese company that deals only in softgoods and investment services. Huang Liangjin states unequivocally, and under penalty of perjury, that this Top Union has never been involved in the shipment of steel or the chartering of vessels. However, Huang Liangjin admits in the declaration that Top Union (China) Ltd. is

registered at Unit 801 8/F, Bonham Trade Centre, 50 Bonham Strand, Hong Kong. *See Liangjin Decl.* ¶ 6.

12. This is the exact same name and address that Connie Lim gave for the charterer of the M/V MANAS – and the same company that chartered the M/V Alexis, the Vessel in the instant action. *See January 14 email from Connie Lim at Ex. “4;” See also M/V Alexis Fixture Recap at Ex. “2.”*

13. Most importantly, we are in receipt of a Letter of Indemnity (“LOI”) which was delivered by the Charterers of the MV MANAS to the Owners of that vessel when the Charterers asked to have the consignee of the cargo changed from that named on the bill of lading. The LOI refers to a shipment of “flat steel zined in coils” and “protected steel in coils” being carried aboard the MANAS from Qingdao, China to St. Petersburg, Russia. While the signer of the LOI cannot be identified, the identity of the company being bound is clear. As the letterhead establishes, the LOI was sent by: “Top Union (China) Ltd, Unit 801 8/F, Bonham Trade Centre, 50 Bonham Strand, Hong Kong” and is signed by “Top Union (China) Limited” as “Charterers” of the M/V Manas. *See LOI annexed hereto as Exhibit “5.”*

14. This LOI belies all of the sworn statements of Huang Liangjin that Top Union (China) Limited had never chartered a vessel, had never dealt with a charter broker, had no involvement in shipments of steel, had not chartered the M/V MANAS, and that they had never dealt with or heard of Pacmar. *See Huang Decl.* ¶¶ 16, 18-20, 33.

15. The Liangjin Declaration also states that Huang Liangjin spoke with Ms. Lim several times and that during one of these conversations, Ms. Lim “confirmed to me that based upon her investigation, PacMar Shipping had identified wrong Top Union to the Tisdale office,

our Company was not the party that had previously chartered the vessels.” *See Liangjin Decl.* ¶ 31.

16. The undersigned spoke with Ms. Lim by telephone on February 4, 2008; Ms. Lim confirmed that “at no time did I ever tell Top Union or anyone else that ‘Pacmar Shipping had identified the wrong Top Union to the Tisdale Office.’”

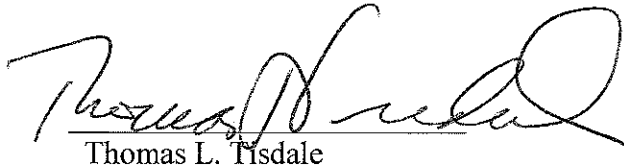
17. Instead, Ms. Lim confirmed yet again that the LOI in the MANAS charter was provided for and signed on behalf of Top Union (China) Ltd. and bears the address described above for Top Union (China) Ltd.

18. Ms. Lim also stated that, other than what was provided in the LOI, she could not identify the Charterer of the MANAS with complete certainty because all of her dealings were with the Charterers’ broker, Neva-Delta, and not with Top Union directly.

19. She confirmed that she never told Huang Liangjin or anyone else from Top Union that she had identified the wrong Top Union.

20. However, Ms. Lim further stated that she and her boss at Pacmar were reluctant to assist further since Top Union had threatened to institute legal proceedings against them for allegedly providing false information. As a result, they would not execute a declaration themselves but, with the consent of the owners of the MANAS, would release a copy of the LOI signed by Top Union, which was the basis for the information contained in Ms. Lim’s email of January 14, 2008.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.


Thomas L. Tisdale